

California Fair Political Practices Commission

MEMORANDUM

To: Chairman Getman, Commissioners Downey, Knox and Swanson

From: Hyla P. Wagner, Senior Counsel
Luisa Menchaca, General Counsel

Date: August 21, 2002

Subject: **Payments for Communications that Clearly Identify a State Candidate – Adoption of Amendment to Regulation 18539.2**

A. Summary. Regulation 18539.2 sets forth the disclosure required on reports filed pursuant to section 85310 of the Political Reform Act¹ concerning disclosure of communications that clearly identify a state candidate. At the July 11, 2002 meeting, the Commission approved for pre-notice discussion a minor amendment to regulation 18539.2 to require disclosure of the type of communication made, such as television or radio broadcasts, print advertisements, or literature and mailings.² No comments on the proposed amendment were received during the notice period and the amendment is now before the Commission for adoption.

B. Section 85310. Section 85310 of the Act requires the reporting of payments of \$50,000 or more for communications that clearly identify a state candidate and are made within 45 days of an election, even though the communication does not “expressly advocate” the election or defeat of the candidate. This section is designed to capture reporting of payments made for election-related “issue ads” by political parties, PACs, and others. Section 85310 provides in part:

“(a) Any person who makes a payment or a promise of payment totaling fifty thousand dollars (\$50,000) or more for a communication that clearly identifies a candidate for elective state office, but does not expressly advocate the election or defeat of the candidate, and that is disseminated, broadcast, or otherwise published within 45 days of an election, shall file online or electronically with the Secretary of State a report disclosing the name of the person, address, occupation, and employer, and amount of the payment. The report shall be filed within 48 hours of making the payment or the promise to make the payment.”

¹ Government Code sections 81000 – 91014. All references are to the Government Code, unless otherwise indicated.

² A more detailed discussion of § 85310 and reg. 18539.2 is contained in the pre-notice memorandum to the Commission dated June 28, 2002 (available at www.fppc.ca.gov under Past Agendas – July).

To implement section 85310, the Commission adopted regulation 18539.2 which sets forth the required contents of the reports. Regulation 18539.2, attached as Appendix 1, currently requires filers to report the following:

- (1) the name and address of the person making the payment totaling \$50,000;
- (2) his or her occupation or employer (if an individual);
- (3) the amount of the payment;
- (4) the Secretary of State committee identification number if the person making a payment of \$50,000 or more is a committee;
- (5) the date of the payment;
- (6) the name and office sought or held by the candidate identified in the communication; and
- (7) identification of amended information.

The FPPC and the Secretary of State's office worked together to develop the electronic form for reporting under section 85310, the E-530 – Communications Identifying Candidates. That form requests the information set forth above and also asks filers, in an “optional” field, to describe the type of communication purchased. To eliminate the “optional” field, the Secretary of State's office requested that the Commission consider amending regulation 18539.2 to require a description of the purpose of the expenditure for which the payment of \$50,000 or more was made. The proposed amendment would insert a new subdivision requiring filers to state the type of communication that they purchased, whether a television or radio advertisement, a print advertisement, or literature and mailings, clearly identifying the candidate. For ease of reporting, the proposed regulation uses categories which already exist as expenditure purpose codes on Schedule E - Payments Made.

Knowing the type of communication used for an election-related issue ad is valuable information for public disclosure. Section 85310 itself discusses the type of communication involved in the issue ad, requiring reporting of such communications that are “disseminated, broadcast, or otherwise published.” It therefore seems well within the scope of the statute to require that filers disclose the type of communication used for the election-related issue ad. In addition, the reporting required to describe the type of communication made under section 85310 is analogous to reporting the purpose of expenditures on Schedule E of Form 460, which committees routinely report. Further, requesting disclosure of the type of communication used under section 85310 does not impose a significant burden on filers because this information is readily available.

Recommendation. In light of the above, staff recommends that the Commission approve for adoption the amendments to regulation 18539.2. Staff also recommends approval of the revised E-530 Instructions 2002, attached as Appendix 2, which reflects the regulatory change.

Attachments

Appendix 1 – Proposed regulation 18539.2

Appendix 2 – E-530 Instructions 2002, Communications Identifying Candidates